

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN, OHIO

IN RE

CASE NO: 09-43704

CHAPTER 13

DOUGLAS WILLIAM MILLER

Honorable Kay Woods

Debtor

DOUGLAS WILLIAM MILLER

Adversary No.

995 State Route 534 SW

Newton Falls, OH 44444

Plaintiff

v.

**ADVERSARY COMPLAINT
TO AVOID LIEN
OF NATIONAL CITY BANK**

Assurafirst Financial Company

26400 Lahser RD

Suite 444

Southfield, MI 48034

Defendant

And

US Bank Home Mortgage

Lerner, Sampson & Rothfuss

Attn.: Joel K. Jensen

PO Box 5480

Cincinnati, OH 45201-5480

Defendant

And

National City Bank

PO Box 5570

Cleveland, OH 44101-0570

Defendant

Douglas William Miller, by and through counsel, for his Complaint against Defendants, states as follows:

PARTIES

1. Douglas William Miller (Debtor) filed a Chapter 13 Bankruptcy filed on September 30, 2009 and brings this action in that capacity pursuant to the Federal Rules of Bankruptcy Procedure.
2. The Debtor is an individual residing in Newton Falls, Ohio. The Debtor filed a petition for bankruptcy under Chapter 13 for Case # 09-43704 on September 30, 2009.
3. The Defendant, Assurafirst Financial Company at all times mentioned in this Complaint, is a Michigan corporation, with its principal place of business in the State of Michigan.
4. The Defendant, US Bank Home Mortgage, through their attorney, who filed a Notice of Appearance on February 10, 2010 is presumed to be the successor in interest to Assurafirst Financial Company, is a financial institution duly registered to operate in the State of Ohio and may have an interest in this action.
5. The Defendant, National City Bank is a financial institution duly registered to operate in the State of Ohio.

JURISDICTION AND VENUE

1. Jurisdiction for this action is conferred on the Court by Article I, Section 8 of the United States Constitution. This is a core proceeding under 28 U.S.C. Sec. 157 (b)(2).
2. This action is commenced as an adversary proceeding pursuant to the provisions of Rule 7001 of the Federal Rules of Bankruptcy Procedure. In this District, jurisdiction is also based upon General Order Number 84 in that this action arise in the bankruptcy case Douglas William Miller as a Chapter 13 petition and denominated as case 09-43704 (Bankruptcy Case).
3. The estate is being administrated in this Court, and the Bankruptcy case is pending in this Court. Venue is according appropriate in this Court pursuant to 28 USC sec. 1409(a).

4. This adversary proceeding is initiated pursuant to Part VII of Federal Rules of Bankruptcy Procedure.

COUNT ONE-AVOIDANCE

5. The Trustee hereby incorporates each and every allegation contained in Paragraphs 1-4 of the Complaint herein by reference.
6. On or about November 10, 2005, a General Warranty Deed, Document # 200511100034606 was filed in the Trumbull County records from John Stephens and Kimberly Stephens (Husband and Wife) to Douglas W. Miller, single. (copy of deed attached as Exhibit A)
The real estate is described as follows:

Situated in the Township of Braceville, County of Trumbull and State of Ohio: and known as being part of Section 19 in the Township and bounded and described as follows:

Beginning at a point in the center line of Newton Falls-Southington-Smith Road (ST RT 534) said point being the southerly 1183.18 feet as measured along the centerline of said road, from an iron pin set at the intersection of the center lines of the Newton Falls-Southington-Smith Road and the Oviatt-Windham Road; thence from the place of beginning S. 89 deg. 22 E. through an iron pin set in the easterly right of way line of the Newton Falls-Southington-Smith Road a distance of 528.75 feet to an iron pin set in the Grantor's East line; thence S. 0 deg. 04' E. along Grantor's East line a distance of 308.9 feet to an iron pin set in the North line of Crystal Sherman's land thence N. 89 deg. 41' W., along said North line and through an iron pin set in the Easterly right-of-way line of the last named road a distance of 543 feet to an pin set in the centerline of said road; thence N. 1 deg. 09' E., along the center line of said road distance of 312.08 feet to the place of beginning and contains 3.87 acres of land as surveyed by I.R. Gregg Reg Surveyor 1950.

EXCEPTING THEREFROM, Situated in the Township of Braceville, County of Trumbull and State of Ohio and known as being part of Section 19 in said Township and further bounded and described as follows:

Beginning at an iron pin found at the centerline intersection of Newton Falls-Southington -Smith Road (534) and Oviatt Windham Road (CH 128); thence South 0 deg. 16' 21" East, a distance of 361.79 feet to an angle point in said centerline of Newton Falls-Southington-Smith Road; Thence South 1 deg. 09' West, continuing along said center line of Newton Falls-Southington-Smith Road; a distance of 821.39 feet to a point in the southwest corner of land now owned by P & R. Given as recorded in Volume 797, Page 1088 of Trumbull County record of Deeds and the True place of Beginning for the parcel herein described; thence South 89 deg. 19' 39" East, along the south line of said Given's land and passing over an iron pin 30.00 feet, a distance of 535.46 feet to an iron pin found on the west line of land now or formerly owned by P. & R. Given, as recorded in Volume 868, Page 551, of Trumbull County Records of Deeds; thence South 0 deg. 04' East along said west line of Given's land, a distance of 70.00 feet to an iron pin; thence North 89 deg. 29' 39" West, and passing over an iron pin at 506.95 feet a distance of 536.95 feet to a point on the center line of said Newton Falls-Southington-Smith Road;

Thence North 1 deg. 09' East, along said road centerline, a distance of 70.00 feet to a point and the true place of beginning, and containing 0.862 acres of land as surveyed in June 1982, by Jerry W. Daniel, Reg. Surveyor No. 6222.

PPN 54-085600

Property address: 995 State Route 534, SW, Newton Falls, Ohio 44444

7. A First Mortgage held by Assurafirst Financial Company/ Mortgage Electronic Registration Systems, Inc-Nominee in the sum of \$124,000.00; (copy of the recorded mortgage Exhibit B);
8. Mortgage held by National City bank in the sum of \$16,582.08; (copy of the recorded Mortgage and monthly statement from National City Bank dated 10/15/2009 as Exhibit C);

The Debtor further represents to this Court that the value of the real estate is \$119,500.00 per Trumbull County Auditor (copy attached as Exhibit D).

REQUEST FOR RELIEF

9. The debtor asks that this Honorable Court find that the value of the real estate is not adequate to secure the lien filed on behalf of National City Bank and for an Order avoiding any mortgage and lien by National City Bank.

Respectfully submitted,

/s/ Dann S. Timmons
Dann S. Timmons #0037943
Attorney for Debtor
8136 Main Street
PO Box 403
Garrettsville, Ohio 44231
(330) 527-4882

CERTIFICATE OF SERVICE

A copy of the foregoing Motion dated this 23rd day of March 2010 was sent to the following:

US Trustee's Office
Served electronically

Chapter 13 Trustee, Michael Gallo
Served electronically

Assurafirst Financial Company

26400 Lahser RD
Suite 444
Southfield, MI 48034
Served by US regular Mail

US Bank Home Mortgage
Lerner, Sampson & Rothfuss
Attn.: Joel K. Jensen
PO Box 5480
Cincinnati, OH 45201-5480
Serve by US regular Mail

National City Bank
Serve Highest Officer
PO Box 5570
Cleveland, OH 44101-0570
Served by US certified mail, return receipt requested

/s/ Dann S. Timmons
Dann S. Timmons #0037943
Attorney for Debtor